

### **Financial Collateral Arrangements**

Following the rapid expansion of financial markets in the past decade, in particular in the trading of credit derivatives and related instruments used to downgrade credit risk, the necessity for a harmonized legal framework throughout Europe became eminent to ensure the operability and functioning to the Joint market of financial services, especially with regard to cross border transactions.

The European Commission addressed this need by the proposal, and later adoption, of the Directive on Financial Collateral Arrangements, which as a part of the Action Plan on Financial Services requires member states to adopt into their national legislation, provisions regulating the minimum standards of such arrangement. The regulation adopts the approach of minimal formalism, with regard to the creation and enforcement of such secured arrangements and with emphasis on the collectability of the secured claims and general strengthening of the position of the creditor – the collateral taker. This also includes the protection of such arrangements from national insolvency proceedings.

Even though the Czech Republic, like vast majority of the member states, adopted the Directive quite diligently, it failed to enforce some crucial matters related to the practical operation of the financial collateral transactions, namely the inscription of the collateralization with the national securities registrar and thus significantly impairing the possibility of use of the adopted legislation with respect of book entered securities.

On the other hand, the Czech legislator surpassed the Directive by allowing debt instruments, such as certain eligible bank loan claim, to act as financial collateral. This approach became widely accepted throughout the member states, and an amendment to the Directive, which is currently being prepared implements similar provisions.

It can be concluded, that despite few mainly technical discrepancies, the Czech legislation, explicitly the provisions in the Commercial Code, correctly reflect the regulation required by the Directive. Unfortunately, due to significant administrative issues and a number of interpretation uncertainties, the main goals of the Directive remain unfulfilled in the Czech legal system and the use of financial collateral arrangements in the Czech Republic is till severely limited.

**Keywords**

Financial Collateral Arrangements; Security; Collateralization

**Klíčová slova**

Finanční zajištění; kolaterál; zástava